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King's Conviction Appealed to Court

By James R. Polk
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The Supreme Court was asked yesterday to clear the late Rev. Dr. Martin Luther King Jr. from conviction in a Birmingham civil rights march five years before his slaying.

Dr. King was among 52 marchers arrested for parading without a permit during the Easter weekend protest in 1963 that marked a major turning point in the civil rights movement.

A test case involving another minister could affect the convictions of Dr. King and other persons arrested during the Birmingham demonstrations, civil rights attorneys say.

Argument Before Court

The lawyers argued before the high court yesterday that a restriction such as the parade permit ordinance infringes on First Amendment freedoms of speech and assembly and "may be disobeyed with impunity if it is unconstitutional on its face."

The appeal was carried to the Supreme Court on behalf of the Rev. Fred L. Shuttlesworth, one of the civil rights leaders arrested in the march with Dr. King.

The Supreme Court, in a 5-to-4 decision more than a year ago, upheld the separate contempt of court convictions of Mr. Shuttlesworth, Dr. King and five other Negro ministers who violated a state court order and led marches that weekend.

But Justice Potter Stewart noted yesterday the latest appeal does not involve any question of disorderly conduct or defiance of a court order. Stewart questioned whether 52 people walking down a sidewalk was a large enough crowd to be considered a parade.

'Explosive Situation'

Birmingham attorney Earl McBee argued that a city may regulate the use of streets and sidewalks, and said an organized march competes with other pedestrians for space. He said the police arrests were justified because "there was an explosive situation in the city of Birmingham at that time."

But Chief Justice Earl Warren asked how this group differed in any way from a group of people at a convention walking on the sidewalks from their hall back to the hotel.

"Those arrested wanted to go to jail," McBee said.

Mr. Shuttlesworth, a Cincinnati minister, is secretary of the Southern Christian Leadership Conference that Dr. King headed.